The Malayan Law Journal

1978

BEING

REPORTS OF MALAYSIAN AND SINGAPORE CASES DETERMINED IN THE HIGH COURTS, THE FEDERAL COURT OF MALAYSIA, THE COURT OF APPEAL AND THE COURT OF CRIMINAL APPEAL OF SINGAPORE, AND THE PRIVY COUNCIL.

PRIVY COUNCIL REPORT

TEO HOCK SENG v. PUBLIC PROSECUTOR

[P.C. (Lord Diplock, Lord Fraser of Tulleybelton and Lord Russell of Killowen) February 6 and 27, 1978]

[Privy Council Appeal No. 38 of 1977]

Criminal Law and Procedure — Charge of trafficking in morphine — Expert evidence to establish quantity of morphine — Expert called by defence — Request for adjournment refused — Admissibility of cautioned statement — Misuse of Drugs Act, 1973, ss. 3(a) and 14.

Misuse of Drugs — Trafficking in morphine — Expert evidence — Misuse of Drugs Act, 1973, ss. 3(a) and 14.

In this case the appellant had been convicted of trafficking in 46.38 grammes of morphine. The packages alleged to contain morphine were found on the appellant concealed in his sock when he was travelling in a taxi from Johore Bahru to Singapore. In a cautioned statement he admitted the offence of trafficking in about 75 grammes of morphine. The principal question in this case was as to the quantity of morphine in the packets. The Government Chemist subjected the packages to a qualitative test, known as paper chromotography and a quantitative test known as gas chromotography. He certified that the morphine content of the two packages amounted to 46.38 grammes. A chemist instructed on behalf of the appellant was given samples of the contents of the two packages for analysis. The Government Chemist also repeated his analysis of the products and these produced the same results as before within less than 2% difference. The Chemist called on behalf of the appellant could not complete his analysis before the trial as he found impurities in the apparatus used. A request for an adjournment was refused.

Held: (1) in the light of the evidence given at the trial the learned judges' refusal of the application for an adjournment was justified, for by the time adjournment was asked for there was no basis for suggesting that any relevant evidence could become available as a result of the chemist's quantitative analysis by gas chromotography;

(2) the learned judges had taken a most unfavourable view of the chemist's reliability as an expert witness and in any case his evidence contained no suggestion that any further analysis of the contents of the packages by him might show a morphine content of less than 30 grammes;

(3) although the judges had ruled that the cautioned statement of the appellant was admissible before giving his counsel an opportunity to make submissions to the contrary, they had in fact listened to counsel's submission after they had indicated their initial ruling and said that he had failed to make them change their minds. In any case there was ample evidence against the appellant without resort to the confession and the appellant did not suffer any denial of justice at the trial.

PRIVY COUNCIL APPEAL FROM SINGAPORE.

George Newman for the appellant.

Stuart McKinnon for the respondent.

Lord Diplock (delivering the judgment of the Board): At his trial before two judges of the High Court of the Republic of Singapore the appellant was convicted of an offence under section 3(a) of the Misuse of Drugs Act, 1973, of trafficking in 46.38 grammes of morphine.

Trafficking for the purposes of the Act includes transporting and the penalty for the offence depends upon the nature and the quantity of the drug involved. In the case of morphine, if the quantity involved is more than 30 grammes the mandatory penalty is death. The significance of the figure of 46.38 grammes in the charge is that it is more than 50% greater than the minimum weight that attracts the death penalty.

The facts as found by the trial judges can be stated shortly. On January 9, 1976, the appellant was stopped at the frontier while travelling in a taxi to Singapore from Johore Bahru. He was searched and found to have concealed in his sock two packages, each containing a block of a brown substance. Together these weighed 75 grammes. At first the appellant said that the packages contained a medicine for the stomach, that he was carrying for an acquaintance and, at the acquaintance's request, he had concealed it in order to avoid paying import duty. Subsequently, however, after he had been arrested, charged and cautioned, he made a statement in Hokkien which was translated into English and signed by the appellant. In this statement he admitted the offence of trafficking in about 75 grammes of morphine.

On the following day, the two packages were handed to the Government Chemist for analysis. He subjected them to a qualitative test, known as paper chromotography, for the indication of the presence of morphine, and afterwards to a quantitative test known as gas chromotography to ascertain the weight of morphine present in the two packages. The results of these analyses were that the morphine content of the two packages amounted to 46.38 grammes. The Chemist issued certificates to this effect which were produced at the preliminary hearing of the charge against the appellant in the Subordinate Court early in March 1976. By section 14 of the Misuse of Drugs Act, 1973, the certificates were *prima facie* evidence of the facts certified.

The appellant reserved his defence and was committed for trial in the High Court.

The hearing in the High Court was due to open on Monday, July 5, 1976. On Thursday, July 1, Dr.

Rintoul, a chemist instructed on behalf of the appellant, was given by the Government Chemist samples of the contents of the two packages for analysis. The Government Chemist also took occasion on that day to repeat his own analyses of the contents of the packages by gas chromotography. These new analyses produced the same results as before within less than 2% difference. This is within the margin of error to be expected with this method of quantitative analysis.

At the trial, the prosecution did not rely exclusively upon the certificates of analysis as evidence of the morphine content of the packages. The Government Chemist was called to give oral evidence of all the analyses which he had made. In the course of his evidence he mentioned that he had found a small quantity of codeine in addition to the 46.38 grammes of morphine. Codeine is a methyl derivative of morphine.

For reasons which do not now call for mention, Dr. Rintoul did not start his quantitative analysis until Tuesday, July 6, although he had verified by qualitative analysis the presence in the sample of morphine and also of some codeine. When he started to use the apparatus for the quantitative test by gas chromotography, however, he found that it contained impurities remaining from the previous use to which it had been put. These impurities made it impossible to obtain accurate quantitative results, although it did indicate that morphine was present in greater quantities than codeine. On the following day, attempts were made by Dr. Rintoul's assistant to clean the apparatus, but these had not been successful by the time that Dr. Rintoul was called as a witness for the defence on Friday, July 9. His examination was concluded on the afternoon of that day and he was recalled for cross-examination on Monday, July 12. His apparatus for the quantitative analysis was still unfit for use. The cross-examination lasted all day and at the end of it Dr. Rintoul was asked how long it would take for him to purify his apparatus sufficiently to enable him to produce an accurate quantitative analysis. He expressed himself as unable to give any answer to this question. The appellant's counsel then applied for an adjournment of the hearing until Dr. Rintoul's accurate quantitative analysis was available. This was refused by the court.

On appeal to the Court of Criminal Appeal two grounds of appeal were eventually relied upon. The principal ground was that the refusal of the judges to grant an adjournment to enable Dr. Rintoul to complete his quantitative analysis amounted to a denial of justice to the appellant. The second ground, which although not abandoned, has not been stressed before their Lordships, was that the judges had ruled upon the admissibility of the appellant's signed confession before they had given his counsel an opportunity to make submissions to them.

In a case in which the quantity of the morphine which is being transported may have such grave consequences on the penalty for the offence, it would seem at first sight to be wrong to deny to the accused an opportunity to present to the court the results of a quantitative analysis by his own expert witness, even though this may involve considerable inconvenience to the court by an adjournment of the hearing. It was for this reason that, on the material before them at the hearing of the appellant's petition for special leave to appeal to the Judicial Committee from the judgment of the Court of Criminal Appeal, their Lordships allowed the petition.

Their Lordships have now had an opportunity of considering the detailed record of the expert evidence given at the trial. In the light of this, they are satisfied that the judges' refusal of the application for the adjournment of the hearing was justified, for by the time the adjournment was asked for there was no basis for suggesting that any relevant evidence could become available as a result of Dr. Rintoul's quantitative analysis by gas chromotography.

It was common ground between the two experts, the Government Chemist and Dr. Rintoul, that morphine was present in the two packages which the appellant was transporting, so the only remaining question on which expert evidence was relevant was whether it was present in a greater quantity than 30 grammes. It was also common ground that the most accurate way of measuring the quantity of morphine present was by gas chromotography. There was no suggestion that this method presented any difficulties of manipulation or observation so as to involve the risk of human error on the part of the analyst: and it was common ground that the margin of difference between one analysis and another was of the order of the 2% which existed between the Government Chemist's two analyses at intervals of six months. It was never suggested to the Government Chemist in cross-examination or hinted at by Dr. Rintoul in examination in chief or in the course of his very lengthy cross-examination that an error of the order of 36% in each of the Government Chemist's analyses was within the bounds of possibility. An error of that order would have been required to reduce the quantity of morphine in the packages to below the critical figure of 30 grammes.

At one point in the course of his evidence, Dr. Rintoul did suggest that the morphine in the packages might have resulted from the disintegration of codeine into morphine. This theory would have been of little assistance to the appellant unless it could account for the production of 16.38 grammes of morphine by the disintegration of codeine between January 9, 1976, and the first analysis by the Government Chemist a few days later — a process of disintegration which then stopped. The irresponsibility of this suggestion was brought out very clearly in the cross-examination of this witness as was his avoidance of having to answer every awkward question by reiterating that he did not wish to commit himself until he was in a position to say exactly what quantity of morphine was disclosed by his own analysis by gas chromotography.

Their Lordships have only been able to scrutinise the transcript of the evidence. The judges at the trial had the advantage of hearing and seeing the witnesses in the box. They took a most unfavourable view of Dr. Rintoul's reliability as an expert witness. They said: —

"We regret to say that Dr. Rintoul was of no assistance to the court. The results of the preliminary tests carried out by him were most unsatisfactory. He had not challenged or repudiated Mr. Lim's figures. Mr. Lim, within a period of six months, had carried out two tests and obtained almost identical results. Dr. Rintoul's evidence failed to throw any doubt whatever on the accuracy of Mr. Lim's analysis. There was no suggestion by the defence that the quantitative analysis of Mr. Lim was so inaccurate that there was a possibility or probability that the quantitative analysis of Dr. Rintoul might prove that the weight of morphine to be less than 30 grammes. We accepted the results obtained by Mr. Lim. For these reasons the application for adjournment was refused."

Their Lordships see no reason for differing from this view. The evidence that Dr. Rintoul had given was insistent on the accuracy of gas chromotographic analysis. It contained no suggestion that any further analysis of the contents of the packages by him might show a morphine content of less than 30 grammes; and unless he could do this, any minor differences in the figures of morphine content would be irrelevant to the offence with which the appellant was charged.

Counsel for the appellant has not sought to urge that, if he failed on the question as to the adjournment, he could succeed in this appeal upon the second ground, viz. that after hearing the evidence as to the circumstances in which the appellant's confession was made, the judges ruled that it was admissible without giving to appellant's counsel an opportunity to make submissions to the contrary.

The judges did in fact listen to counsel's submission after they had indicated their initial ruling but, as they said, he failed to make them change their minds. Quite apart from this, however, there was ample evidence against the appellant without recourse to the confession. Their Lordships are satisfied that the appellant did not suffer any denial of justice at his trial. The appeal must therefore be dismissed.

Appeal dismissed.

Solicitors: *Coward Chance; Charles Russell & Co.*

SINGAPORE REPORTS

VISUVANATHAN v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Chua and Kulasekaram JJ.) February 21, 1978]

[Singapore — Criminal Appeal No. 22 of 1976]

Criminal Law and Procedure — Murder — Drunkenness — Admissibility of cautioned statement — Penal Code, s. 300.

Penal Code, s. 300 — Murder — Drunkenness — Cautioned statement.

Evidence — Cautioned statement — Admissibility.

This was an appeal against the conviction of the appellant for murder. The trial judges found that the appellant started a fight with the deceased and that he stabbed the deceased in the chest. They held that the injuries the appellant inflicted on the deceased were not in exercise of the right of private defence. They also found that the appellant was not so drunk as not to know what he was doing at the material time and was not so affected by alcohol as to be incapable of forming the specific intent under Clause (c) of section 300 of the Penal Code. Accordingly they found the appellant guilty of murder as charged. A cautioned statement of the appellant was admitted in evidence at the trial.

Held: (1) the trial judges were entitled on the evidence before them at the "trial within a trial" to find that there was no inducement, threat or promise and that the appellant's cautioned statement was made voluntarily;

(2) in this case the evidence was overwhelming that the appellant caused the death of the deceased in circumstances which amounted to murder under the Penal Code.

COURT OF CRIMINAL APPEAL.

A.B. Netto for the appellant.

Lawrence Ang (Deputy Public Prosecutor) for the respondent.

Wee Chong Jin C.J. (delivering the judgment of the Court): The appellant, Visuvanathan s/o Thillai Kannu, was convicted by the High Court of the murder of one Madikum Puspanathan and was sentenced to death. We dismissed his appeal against his conviction and sentence at the conclusion of the appeal and stated we would give our reasons later. We now proceed to do so.

The deceased, Madikum Puspanathan, was found by the police lying dead on the road in front of No. 67 Jalan Besar. He had two stab wounds, some minor abrasions and a superficial cut at the base of the right thumb. The pathologist who performed the autopsy certified the cause of death as a stab wound into the heart. That wound is described in the autopsy report as follows: —

"*Fatal gaping stab-wound* below left clavicle.

External appearance	—	Triangular, base 1½ cm., sides 4 cm., with upper tip pointed to left shoulder. Margins were sharp.
Direction	—	downwards and inwards, to central portion of chest.
Depth	—	about 8 cm. deep.
Damages	—	cut through 3rd and 4th rib near left parasternal edge, penetrated left lung (near anterior margin of left upper lobe), then produced a 2 cm. cut at the anterior surface of the heart. (Right ventricle, below pulmonary valve."

The other stab wound was at the left subcostal margin and was externally a cut 2.8 cm. long with a depth of 3.5 cm. directed downwards, inwards and to the left side.